

IN THE HIGH COURT OF BOMBAY AT GOA

First Appeal No.115/1999

1. Shri Ivo Oscar da Gouveia  
Pinto Soares r/o. Joaquim Road,  
Borda, Margao, Goa.

2. Shri Rui Francisco V de Gouveia  
Pinto Soares, represented by his  
Constituted Attorney the Appellant  
No.1 abovenamed.

..... Appellants.

V/s.

1. The Executive Engineer,  
WD XXI (PHE), P.W.D., Fatorda, Margao, Goa.

2. Deputy Collector and S.D.O.  
Quepem, Goa.

..... Respondents.

Mr. M.B. D'Costa, Sr. Advocate with Mr. J.A. Lobo, Advocate for the  
appellants.

Mr. H.R. Bharne, Government Advocate for the respondents.

CORAM : N.A. BRITTO, J.

DATE : APRIL 21, 2004.

ORAL JUDGMENT :

The appellants herein were the applicants in the Land Acquisition  
Case No.64/92.

2. By Notification issued under Section 4(1) of the Land Acquisition  
Act, 1894 ('Act', for short) and published in the Government Gazette dated  
5.2.1987, the Government acquired about 44,669 sq. metres of land for the

purpose of commercial development of the Colva Junction at Margao and in that was included 582 sq. metres of the land of the applicants from Chalta No.1 of P.T. Sheet No.100 and 150 sq. metres from Chalta No.17/72 of P.T. Sheet No.109.

3. The Land Acquisition Officer, by his Award dated 29.5.1989, awarded to the said applicants, compensation at the rate of Rs.65/- per sq. metre. However, the applicants being dis-satisfied with the same and by virtue of their application dated 19.3.1990 sought a reference to be made under Section 18 of the Act, to the District Court and the learned District Judge, South Goa, Margao ('Reference Court', for short) by his Judgment/Award dated 19.6.1999, rejected the said reference with no order as to costs.

4. The said applicants being aggrieved by the said Judgment/Award dated 19<sup>th</sup> June, 1999, have now approached this Court, in appeal against the same. Before the Reference Court, the applicant No.1 examined himself (AW.1) and had produced two sale deeds, the first was dated 4.12.1985 (Exhibit AW.1/B) and the second was dated 28.11.1990 (Exhibit AW.1/C). In support of the first sale deed Exhibit AW.1/B, the applicants had examined AW.3, Wilson Fernandes, the purchaser of the plot, and in support of the second sale deed Exhibit AW.1/C, the applicants had examined AW.4, Shri Rajendra Talak. The plot of the first sale deed was situated at Ambajim/Fatorda and was admeasuring about 856 sq. metres and was purchased at the rate of Rs.291/- per sq. metre. As stated by AW.1, Wilson

Fernandes the plot of this sale deed was at a distance of about 400 metres by road from the acquired land and about 30 metres through fields. The plot of sale deed Exhibit AW.1 was situated at Madel and was admeasuring 1126 sq. metres and was purchased at the rate of Rs.546/- per sq. metre. As stated by AW.1, this plot was situated at Madel at a distance of about 100 metres from Dr. Rebello's Hospital.

5. The applicants had examined AW.2, Civil Engineer Shri Ernesto Moniz who had submitted his report at Exhibit AW.2/A. The respondents had examined their Junior Engineer, namely RW.1, Shri Ganesh Velip.

6. Learned Senior Advocate Shri M.B. D'Costa has submitted that the present acquisition is of the year 1987 and that the set backs spoken of by RW.1 Shri Velip were of the year 1996. Shri D'Costa has further submitted that the evidence of RW.1 Shri Velip is by way of an afterthought, since the facts stated by him were not put in cross examination of AW.1 and other witnesses of the applicants. Shri D'Costa has further submitted that the respondents were certainly in a better position to produce the plan in case the acquired property was not falling in the commercial zone, but in the green zone. Shri D'Costa has next submitted that the reference Court totally lost sight of the fact that the applicants' property had an area of 5526 sq. metres and, therefore, could not have considered the three strips separately, as strips not having building potential. Shri D'Costa has further submitted that the reference Court was wrong in not accepting the report of the expert Shri Moniz because, it was nobody's case that the condition of the land after acquisition had changed.

7. On the other hand, Shri Bharne, learned Government Advocate for the respondents, on behalf of the respondents, has submitted that the reference Court was fully justified in rejecting the reference. Referring to the evidence of RW.1 Shri Velip, Shri Bharne has submitted that he had deposed on the basis of the records and there was no reason why he ought not to have been believed and he has been rightly believed by the Reference Court. Referring to the sale deed dated 28.11.1990-Exhibit AW.1/C, learned Advocate Shri Bharne has submitted that the same is a post-notification sale deed and that could not have been relied upon in the light of what has been laid down by the Hon'ble Supreme Court in the case of ***Karan Singh and others vs. Union of India***, (1997) 8 SCC 186. Referring to the plot of sale deed 4.12.1985 - Exhibit AW.1/B, learned Advocate Shri Bharne has submitted that the same was situated in a developed locality like Fatorda, while the acquired land was not situated in a developed locality. Shri Bharne has next submitted that according to the applicants the land which was acquired from them was a bund, having a width of 12.5 x 62 metres and the said bund could not have been put for development because the development had to be carried out by leaving set backs. Shri Bharne has also placed reliance on the case of ***Hasanali Khanbhai & Sons and ors. vs. State of Gujarat***, (1995) 5 SCC 422, wherein the Hon'ble Supreme Court has observed that one of the factors which needs to be taken into consideration in determining the market value is a possibility of imposing statutory restrictions to develop the land for building purposes.

8. Admittedly, the sale deed dated 28.11.1990-Exhibit AW.1/C is a post-notification sale deed and not only that it was in respect of a land admeasuring 1126 sq. metres, where commercial development has been carried out by AW.4, Shri Talak. In the case of ***Karan Singh and others vs. Union of India*** (supra), the Hon'ble Supreme Court has observed that it is not wrong that in the absence of any evidence of sale of land on the date of issue of notification under Section 4 of the Act, on certain conditions, the post-notification transactions of sale of land can be relied upon in determining the market value of the acquired land, one of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of the land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purpose of fixing the market value of the acquired land and that in case the claimant relies on any post-notification transaction, the burden is upon him to show that the price of the land has remained static and there was no upward rise in the price of land during the period of issue of notification under Section 4 of the Act i.e. date of transaction of sale. In fact, the case at hand, in the sale deed dated 28.11.1990 (Exhibit AW.1/C) shows that there was considerable increase in the price of land and, therefore, the same could not have been used as a guide to fix the market value of the acquired land.

9. The next question, therefore, was whether the sale deed dated 4<sup>th</sup> December, 1985 (Exhibit AW.1/B) could have been used as a guide to fix the market value of the acquired land ?

10. That should take us to find out as to what was the acquired land in this case. The evidence of AW.1, Ivo Oscar Soares as well as the evidence of AW.2, Shri Moniz show that both of them are not at all conversant as to what has been acquired under the said Notification under Section 4(1) of the Act. In any event, it must be observed that AW.2, Shri Moniz has not at all presented the correct facts before the Reference Court and possibly with a view to help his client AW.1 Shri Soares. According to AW.2, Shri Moniz, out of the total area of 5526 sq. metres of land belonging to the applicants, only an area of 582 sq. metres in the middle portion has been acquired. At this stage, it may be noted that the applicant (AW.1 Shri Soares) is himself silent as to what was the total area of his property. The plan produced by AW.2 Shri Moniz along with his report shows that Shri Moniz was well aware that a middle portion between the said two strips admeasuring 582 sq. metres was earlier acquired as otherwise stated by RW.1 Shri Velip. But this fact, Shri Moniz has not stated before the Court and has tried to create an impression that what was acquired, was only the strip of 582 sq. metres of land from the middle portion. The evidence of RW.1 Shri Velip clearly shows that what was acquired in this case, and on which both AW.1, Shri Soares and AW.2, Shri Moniz are silent, is one strip which was adjacent to the National Highway (Margao-Cortalim road) which strip was at a distance of about 13.5 metres from the center of the said National Highway and of which width was

2 metres only. The other two strips as spoken to by RW.1 Shri Velip were of the bund and in between the said two strips there was already another strip which was acquired earlier in the year 1986 by P.W.D. and the other two strips formed part of the said bund and on either sides of the said bund, there were paddy fields. The first strip which is adjacent to the said National Highway, appears to have been a part of the paddy field and as stated by RW.1 Shri Velip it was at a lower level by 1.20 metres. RW.1, Shri Velip regarding the first strip, had stated that the said strip was falling within the road widening area and besides it was lying in the green zone and the set back to be maintained was 21 metres plus 3 metres from the center of the highway. It is possible that RW.1 Shri Velip had spoken of the setbacks relevant for the year 1996, but it is a common knowledge that the set backs from the National Highways are always enforced, at least from the time of the National Highway Act, 1956 came into force and that being so, it was for the said applicants to have proved before the reference Court that inspite of the said first strip being adjacent to the National Highway no set backs were required to be maintained and the same could be put for construction activities. As far as other two strips were concerned of the said bund, there was evidence of three witnesses and particularly admission of AW.1 Shri Soares as well as the evidence of AW.2 Shri Moniz that the said bund had an encumbrance in that there was a way or footpath which was being used by the people for 20 years prior to acquisition and not only that the same was also being used by three wheelers and cars. He had also admitted that on either side of the said bund there were paddy fields and the said paddy field could have been 1.5 metres below the level of road, as otherwise, stated by

RW.1 Shri Velip. As already stated, the applicants did not produce any plan of their property to show the extent, size or dimensions of the same and, therefore, one necessarily need not jump to the conclusion that the entire property of the applicants consisted of paddy fields and the said bund having an area of 5526 sq. metres. It was not even the case of AW.2 Shri Moniz that he had mentioned the said area based on any document which he had perused and that being so, it could not be taken for granted that the applicants' property was admeasuring 5526 sq. metres. Not only the first strip was adjacent to the said National Highway, but considerable portion of the applicants' land must have come within the said road widening area. As far as the bund is concerned, there was the said encumbrance of well defined "path" being used by cars as well as three wheelers. With such impediments, the acquired land could not have been compared with the plot of the sale deed dated 4<sup>th</sup> December, 1985 (Exhibit AW.1/B) though, once upon a time the said plot of Exhibit AW.1/B as well as the applicants' property might have been agricultural in nature.

11. It is now well settled by catena of decisions of the Hon'ble Supreme Court including in the case of ***Special Deputy Collector and another v. Kurra Sambasiva Rao and others***, A.I.R. 1997 SC 2625, that the burden of proof that the amount awarded by the Land Acquisition Officer is not adequate is always on the claimant and the burden is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the L.A.O. or that the L.A.O. proceeded on a wrong premise or applied a wrong principle of law.

Needless to observe, the applicants for enhancement of compensation are required to produce the evidence which is cogent, reliable and acceptable. No such evidence has been produced by the applicants. The applicants have not even mentioned about the extent of their property or the size or the dimensions or its nature as a whole before the same could be compared with the property of sale deed dated 4<sup>th</sup> December, 1985 (AW.1/B). The applicants, therefore, could not certainly get enhancement of compensation based on the sale deed dated 4<sup>th</sup> December, 1985 (AW.1/B).

12. In view of the above matter, though for the reasons slightly different which I have enumerated hereinabove, in my opinion, the reference was rightly rejected by the learned reference Court.

13. I find no merit in this appeal and accordingly, the same is dismissed with no order as to costs.

N.A. BRITTO, J.

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